



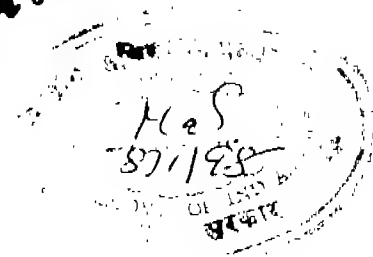
भारत का राजपत्र The Gazette of India.

असाधारण
EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY



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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 11th August 1997:—

BILL No. 115 OF 1997

A Bill further to amend the Narcotic Drugs and Psychotropic Substances, Act, 1985.

BE it enacted by Parliament in the Forty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1997.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act, and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

61 of 1985.

2. In the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the principal Act), in section 1, in sub-section (2), after the words "whole of India", the following shall be inserted, namely:—

Amendment of
section 1.

"and it applies also—

(a) to all citizens of India outside India;

(b) to all persons on ships and aircrafts registered in India, wherever they may be".

Amendment
of section 2.

3. In section 2 of the principal Act,—

(a) for clause (i), the following clause shall be substituted, namely:—

'(i) "addict" means a person who has dependence on any narcotic drug or psychotropic substance;';

(b) clause (viii) shall be relettered as clause (viid) and before (viid) as so relettered, the following clauses shall be inserted, namely:—

'(viii) "commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;

'(viib) "controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, controlled substances or substances substituted for them to pass out of, or through or into the territory of India with the knowledge and under the supervision with a view to identifying the persons involved in the commission of an offence under this Act;

'(viic) "corresponding law" means any law corresponding to the provisions of this Act;';

(c) after clause (xxiii), the following clause shall be inserted, namely:—

'(xxiiia) "small quantity", in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette.'.

Amendment
of section 7A.

4. In section 7A of the principal Act, for sub-sections (2) and (3), the following sub-sections shall be substituted, namely:—

"(2) The Fund shall be applied by the Central Government to meet the expenditure incurred in connection with the measures taken for—

(a) combating illicit traffic in narcotic drugs, psychotropic substances or controlled substances;

(b) controlling the abuse of narcotic drugs and psychotropic substances;

(c) identifying, treating, rehabilitating addicts;

(d) preventing drug abuse;

(e) educating public against drug abuse;

(f) supplying drugs to addicts where such supply is a medical necessity.

(3) The Central Government may constitute a Governing Body as it thinks fit, to advise that Government and to sanction money out of the said Fund subject to the limit notified by the Central Government in the Official Gazette."

Insertion of
new section
8A.

5. After section 8 of the principal Act, the following section shall be inserted, namely:—

'8A. No person shall—

(a) convert or transfer any property knowing that such property is derived from an offence committed under this Act or under any other corresponding law of any other country or from an act of participation in such offence, for the purpose of concealing or disguising the illicit origin of the property or to assist any person in the commission of an offence or to evade the legal consequences; or

Prohibition of
certain
activities
relating to
property
derived from
offence.

(b) conceal or disguise the true nature, source, location, disposition of any property knowing that such property is derived from an offence committed under this Act or under any other corresponding law of any other country; or

(c) knowingly acquire, possess or use any property which was derived from an offence committed under this Act or under any other corresponding law of any other country.'.

6. For section 15 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 15.

"15. Whoever, in contravention of any provisions of this Act or any rule or order made or condition of a licence granted thereunder, produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw or removes or does any act in respect of warehoused poppy straw shall be punishable,—

Punishment for contravention in relation to poppy straw.

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

7. For section 16 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 16.

"16. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates any coca plant or gathers any portion of a coca plant or produces, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses coca leaves shall be punishable with rigorous imprisonment for a term which may extend to ten years, or with fine, or with both."

Punishment for contravention in relation to coca plant and coca leaves.

8. For section 17 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 17.

"17. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses prepared opium shall be punishable,—

Punishment for contravention in relation to prepared opium.

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both; or

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine; or

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.”.

Substitution of
new section
for section 18.

9. For section 18 of the principal Act, the following section shall be substituted, namely:—

Punishment
for contraven-
tion in relation
to opium
poppy and
opium.

“18. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both;

(b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;

(c) in any other case, with rigorous imprisonment which may extend to ten years and with fine.”.

Amendment of
section 20.

10. In section 20 of the principal Act, in clause (b), for sub-clauses (i) and (ii), the following sub-clauses shall be substituted, namely:—

“(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine; and

(ii) where such contravention relates to sub-clause (b),—

(a) and involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both;

(b) and involves quantity lesser than commercial quantity but greater than small quantity with rigorous imprisonment for a term which may extend to ten years and with fine;

(c) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.”.

Substitution of
new section
for section 21.

11. For section 21 of the principal Act, the following section shall be substituted, namely:—

"21. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,—

Punishment for contravention in relation to manufactured drugs and preparations.

(a) where the contravention involves small quantity with rigorous imprisonment for a term which may extend to six months, or with fine, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

12. For section 22 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 22.

"22. Whoever, in contravention of any provision of this Act, or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable,—

Punishment for contravention in relation to psychotropic substances.

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity with rigorous imprisonment for a term which may extend to ten years and with fine;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

13. For section 23 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 23.

"23. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence or permit granted or certificate or authorisation issued thereunder, imports into India or exports from India or tranships any narcotic drug or psychotropic substance shall be punishable,—

Punishment for illegal import into India, export from India or transhipment of narcotic drugs and psychotropic substances.

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both;

(b) where the contravention involves quantity, lesser, than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which

may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

Substitution of new section for section 25.

14. For section 25 of the principal Act, the following section shall be substituted, namely:—

Punishment for allowing premises, etc., to be used for commission of an offence.

"25. Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for the offence."

Substitution of new section for section 27.

15. For section 27 of the principal Act, the following section shall be substituted, namely:—

Punishment for consumption of any narcotic drug or psychotropic substance.

"27. Whoever consumes any narcotic drug or psychotropic substance shall be punishable,—

(a) where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine, or with both; and

(b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months, or with fine, or with both."

Amendment of section 30.

16. In section 30 of the principal Act, for the words, figures and brackets "section 15 to section 25 (both inclusive) and from the circumstances of the case", the words, figures and letter "sections 19, 24 and 27A and for offences involving commercial quantity of any narcotic drug or psychotropic substance and from the circumstances of the case" shall be substituted.

Substitution of new section for section 31.

17. For section 31 of the principal Act, the following section shall be substituted, namely:—

Enhanced punishment for offences after previous conviction.

"31. (1) If any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under this Act is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under this Act with the same amount of punishment shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to one-half of the maximum term of imprisonment and also be liable to fine which shall extend to one-half of the maximum amount of fine.

(2) Where the person referred to in sub-section (1) is liable to be punished with a minimum term of imprisonment and to a minimum amount of fine, the minimum punishment for such person shall be one-half of the minimum term of imprisonment and one-half of the minimum amount of fine:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding the fine for which a person is liable.

(3) Where any person is convicted by a competent court of criminal jurisdiction outside India under any corresponding law, such person, in respect of such conviction, shall be dealt with for the purposes of sub-sections (1) and (2) as if he had been convicted by a court in India."

18. In section 31A of the principal Act,—

Amendment of
section 31A.

(a) in sub-section (1),—

(i) for the words, figures, brackets and letter "section 15 to section 25 (both inclusive) or section 27A", the words, figures and letter "section 19, section 24, section 27A and for offences involving commercial quantity of any narcotic drug or psychotropic substance" shall be substituted;

(ii) in sub-clause (a), in the Table, in column (2), against entry (viii), for the figures and word "1,500 grams", the words "lesser of the quantity between the quantities given against the respective narcotic drugs or psychotropic substances mentioned above forming part of the mixture," shall be substituted;

(b) in sub-section (2), for the words, figures, brackets and letter "section 15 to section 25 (both inclusive), section 27A, section 28 or section 29", the words, figures and letter "section 19, section 24 or section 27A and for offences involving commercial quantity of any narcotic drug or psychotropic substance" shall be substituted.

19. After section 32A of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
32B.

"32B. Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:—

Factors to be
taken into
account for
imposing
higher than the
minimum
punishment.

(a) the use or threat of use of violence or arms by the offender;

(b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;

(c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence; and

(d) the fact that the offence is committed in an educational institution or social service facility or in their immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities."

20. For section 36A of the principal Act, the following section shall be substituted, namely:—

Substitution of
new section for
section 36A.

"36A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

Offences
triable by
Special Courts.

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal procedure, 1973, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that in cases which are triable by the Special Court where such Magistrate considers—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him,

that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973, in relation to an accused person in such case who has been forwarded to him under that section;

2 of 1974.

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

2 of 1974.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973, and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36.

2 of 1974.

(4) In respect of persons accused of an offence punishable under section 19, or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

2 of 1974.

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the special Court shall extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences punishable under this Act with imprisonment for a term of less than three years may be tried summarily."

2 of 1974.

21. For section 36D of the principal Act, the following section shall be substituted, namely:—

"36D. (1) Any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988, which is triable by a Special Court, shall, until a Special Court is constituted under section 36, notwithstanding anything contained in the Code of Criminal Procedure, 1973, be tried by a Court of Session.

2 of 1989.

(2) Where any proceedings in relation to any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 are pending before a Court of Session, then notwithstanding anything contained in sub-section (1), such proceeding shall be heard and disposed of by the Court of Session:

2 of 1974.

2 of 1989.

Substitution of new section for section 36D.

Transitional provisions.

2 of 1974.

Provided that nothing contained in this sub-section shall affect the power of the High Court under section 407 of the Code of Criminal Procedure, 1973 to transfer any case or class of cases taken cognizance by a Court of Session under sub-section (1)."

22. In section 37 of the principal Act, in sub-section (1), in clause (b), for the words "a term of imprisonment of five years or more under this Act", the words, figures and letter "offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity" shall be substituted.

Amendment of
section 37

23. In section 39 of the principal Act, in sub-section (1), after the words and figures "under section 27", the words "or for offences relating to small quantity of any narcotic drug or psychotropic substances" shall be inserted.

Amendment of
section 39.

24. For section 41 of the principal Act, the following section shall be substituted, namely:—

Substitution of
new section
for section 41.

"41. (1) A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under this Act, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed.

Power to issue
warrant and
authorisation.

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the para-military forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search or the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under section 42".

25. For section 42 of the principal Act, the following section shall be substituted, namely:—

Substitution of
new section for
section 42.

"42. (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special

Power of entry,
search, seizure
and arrest with-
out warrant or
authorisation.

order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing, that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

- (a) enter into and search any such building, conveyance or place;
- (b) in case of residence, break open any door and remove any obstacle to such entry;
- (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and
- (d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within a reasonable time send a copy thereof to his immediate official superior.”.

26. For section 43 of the principal Act, the following section shall be substituted, namely:—

‘43. Any officer of any of the departments mentioned in section 42 may—

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation.—For the purposes of this section, the expression “public place” includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.’.

Substitution of new section for section 43.

Power of seizure and arrest in public place.

27. In section 44 of the principal Act, after the words "psychotropic substance", the words "or controlled substance" shall be inserted.

Amendment of section 4

28. In section 49 of the principal Act, after the words "psychotropic substance", the words "or controlled substance" shall be inserted.

Amendment of section 49.

29. In section 50 of the principal Act, after sub-section (4), the following sub-sections shall be inserted, namely:—

Amendment of section 50.

"(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973.

2 of 1974.

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within a reasonable time send a copy thereof to his immediate official superior."

30. After section 50 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 50A.

"50A. The Director General of Narcotics Control Bureau constituted under sub-section (3) of section 4 or any other officer authorised by him in this behalf, may, notwithstanding anything contained in this Act, undertake controlled delivery of any consignment to—

Power to undertake controlled delivery.

(a) any destination in India;

(b) a foreign country, in consultation with the competent authority of such foreign country to which such consignment is destined,

in such manner as may be prescribed."

31. In section 53 of the principal Act,—

Amendment of section 53.

(a) in sub-section (1), for the words "or Border Security Force", the words "or any other Department of the Central Government including para-military forces or armed forces" shall be substituted;

(b) in sub-section (2), after the word "excise", the words "or any other Department" shall be inserted.

32. For section 54 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 54.

"54. In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of—

Presumption from possession of illicit articles.

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured,

for the possession of which he fails to account satisfactorily."

Amendment of
section 60.

33. In section 60 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.”;

(b) in sub-sections (2) and (3), after the words “psychotropic substances” wherever they occur, the words “or controlled substances” shall be inserted.

Amendment of
section 61.

34. In section 61 of the principal Act, for the words “narcotic drug or psychotropic substance”, the words “narcotic drug, psychotropic substance or controlled substance” shall be substituted.

Amendment of
section 62.

35. In section 62 of the principal Act, for the words “narcotic drug or psychotropic substance”, the words “narcotic drug, psychotropic substance or controlled substance” shall be substituted.

Amendment of
section 63.

36. In section 63 of the principal Act,—

(a) in sub-section (2), in the second proviso, after the words “psychotropic substances,” the words “controlled substances,” shall be inserted;

(b) sub-section (3) shall be omitted.

Substitution of
new section for
section 64A.

37. For section 64A of the principal Act, the following section shall be substituted, namely:—

Immunity from
prosecution to
addicts volun-
teering for
treatment

“64A. Any addict, who is charged with an offence punishable under section 27 or with offences involving small quantity of narcotic drugs or psychotropic substances, who voluntarily seeks to undergo medical treatment for de-addiction from a hospital or an institution maintained or recognised by the Government or a local authority and undergoes such treatment shall not be liable to prosecution under section 27 or under any other section for offences involving small quantity of narcotic drugs or psychotropic substances:

Provided that the said immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-addiction.”.

Amendment of
section 68A

38. In section 68A of the principal Act, in sub-section (2),—

(i) in clause (a), for the word “five”, the word “ten” shall be substituted;

(ii) after clause (c), the following clause shall be inserted, namely:—

“(cc) every person who has been arrested or against whom a warrant or authorisation of arrest has been issued for the commission of an offence punishable under this Act with imprisonment for a term of ten years or more, and every person who has been arrested or against whom a warrant or authorisation of arrest has been issued for commission of a similar offence under any corresponding law in any other country;”;

(iii) in clauses (d), (e) and (f), after the words, brackets and letter “clause (c)”, the words, brackets and letters “or clause (cc)” shall be inserted.

Amendment of
section 68B.

39. In section 68B of the principal Act, in clause (g), in sub-clause (i), for the words “illicit traffic”, the words “contravention of any provisions of this Act” shall be substituted.

40. In section 68C of the principal Act, for the proviso, the following proviso shall be substituted, namely:—

Amendment of
section 68C.

“Provided that no property shall be forfeited under this Chapter if such property was acquired, by a person to whom this Act applies, before a period of six years from the date he was arrested or against whom a warrant or authorisation of arrest has been issued for the commission of an offence punishable under this Act or from the date the order or detention was issued, as the case may be.”.

41. In section 68E of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment of
section 68E.

“(1) Every officer empowered under section 53 and every officer-in-charge of a police station shall, on receipt of information is satisfied that any person to whom this Chapter applies holds any illegally acquired property, he may, after recording reasons for doing so, proceed to take all steps necessary for tracing and identifying such property.”.

42. In section 68H of the principal Act, in sub-section (2), the following proviso shall be inserted at the end, namely:—

Amendment of
section 68H.

“Provided that no notice for forfeiture shall be served upon any person referred to in clause (cc) of sub-section (2) of section 68A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause.”.

43. In section 68-I of the principal Act, after sub-section (3), the following proviso shall be inserted at the end, namely:—

Amendment of
section 68-I.

“Provided that no illegally acquired property of any person who is referred to in clause (cc) of sub-section (2) of section 68A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause shall stand forfeited.”.

44. In section 68-O of the principal Act, in sub-section (1), for the words “Any person aggrieved by an order of the competent authority”, the words, brackets, figures and letter “Any officer referred to in sub-section (1) of section 68E or any person aggrieved by an order of the competent authority” shall be substituted.

Amendment of
section 68-O.

45. After section 68Y of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
68Z.

“68Z. (1) Where the detention order of a detenu is set aside or withdrawn, properties seized or frozen under this Chapter shall stand released.

Release of
property in
certain cases.

(2) Where any person referred to in clause (a) or clause (b) or clause (cc) of sub-section (2) of section 68A has been acquitted or discharged from the charges under this Act or any other corresponding law of any other country and the acquittal was not appealed against or when appealed against, the appeal was disposed of as a consequence of which such property could not be forfeited or warrant of arrest or authorisation of arrest issued against such person has been withdrawn, then, property seized or frozen under this Chapter shall stand released.”.

46. In section 76 of the principal Act, in sub-section (2), after clause (c), the following clause shall be inserted, namely:—

Amendment of
section 76.

“(ca) the manner in which “controlled delivery” under section 50A is to be undertaken;”.

Amendment of
section 77.

47. In section 77 of the principal Act, for the portion beginning with the words "Every rule made under this Act" and ending with "shall be laid, as soon as may be, after it is made or issued", the following shall be substituted, namely:—

"Every rule made under this Act by the Central Government and every notification or order issued under clause (viii), clause (xi), clause (xxiii) of section 2, section 3, section 9A and clause (a) of section 27 shall be laid as soon as may be, after it is made or issued".

Application of
this Act to
pending cases.

48. (1) Notwithstanding anything contained in sub-section (2) of section 1, all cases pending before the courts or under investigation at the commencement of this Act shall be disposed of in accordance with the provisions of the principal Act as amended by this Act and accordingly, any person found guilty of any offence punishable under the principal Act, as it stood immediately before such commencement, shall be liable for a punishment which is lesser than the punishment for which he is otherwise liable at the date of the commission of such offence:

Provided that nothing in this section shall apply to cases pending on appeal.

(2) For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this Act has not come into force.

STATEMENT OF OBJECTS AND REASONS

The Narcotic Drugs and Psychotropic Substances Act, 1985 provides deterrent punishment for various offences relating to illicit trafficking in narcotic drugs and psychotropic substances. Most of the offences invite uniform punishment of a minimum ten years rigorous imprisonment which may extend up to twenty years. While the Act envisages severe punishments for drug traffickers, it envisages reformatory approach towards addicts. In view of the general delay in trial it has been found that the addicts prefer not to invoke the provisions of the Act. The strict bail provisions under the Act add to their misery. Therefore, it is proposed to rationalise the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment. This requires rationalisation of the sentence structure provided under the Act. It is also proposed to restrict the application of strict bail provisions to those offenders who indulge in serious offences.

2. The Act was amended in 1989, *inter alia*, to provide for tracing, seizing and forfeiture of illegally acquired property. The experience gained over the years reveals that the provisions have certain inadequacies due to which the implementation of the provisions has been tardy. Certain other inadequacies in the various provisions of the Act have been noticed. In order to remove those inadequacies it is necessary to amend the relevant provisions.

3. The provisions relating to certain procedural aspects like search and seizure have certain deficiencies due to which the law enforcement efforts against illicit drug trafficking have not proved very effective. A need has also been felt to confer powers of entry, search, seizure, etc., in respect of offences relating to Controlled Substances and for tracing, freezing, seizing and forfeiture of illegally acquired property upon the empowered officers.

4. Certain obligations, specially in respect of the concept of "Controlled Delivery" arising from the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 to which India acceded, also require to be addressed by incorporating suitable provisions in the Act.

5. This Bill seeks to achieve the above objects.

NEW DELHI;
The 28th July, 1997.

P. CHIDAMBARAM.

Notes on clauses

Clause 2.—This clause would makes the provisions of the Act applicable to all citizens who are outside the territory of India and to all the persons on ships and aircrafts registered in India, wherever they may be. These are requirements under the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

Clause 3.—This clause seeks to replace the definition of 'addict' and to define the expression 'commercial quantity', 'controlled delivery' and 'small quantity'. The term 'controlled delivery' as defined in the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances is an investigative technique by which suspected drug consignments wholly or substituted are permitted to reach their destinations with a view to bring the entire gang of offenders and to punish him.

Clause 4.—This clause seeks to enlarge the purposes for which the National Fund for Control of Drug Abuse shall be applied. It also seeks to confer power on the Governing Body to sanction money out of the Fund.

Clause 5.—This clause provides that certain activities relating to conversion, etc., of property derived from drug trafficking shall be an offence.

Clause 6.—This clause seeks to rationalise sentence prescribed in respect of offences relating to poppy straw.

Clause 7.—This clause seeks to rationalise the sentence prescribed in respect of offences relating to coca plant and coca leaves.

Clause 8.—This clause seeks to rationalise the sentence prescribed in respect of offences relating to prepared opium.

Clause 9.—This clause seeks to rationalise the sentence prescribed in respect of cultivation of opium poppy and production etc. of opium.

Clause 10.—This clause seeks to rationalise the sentence prescribed in respect of offences relating to cannabis.

Clause 11.—This clause seeks to rationalise the sentence prescribed in respect of offences relating to manufactured drugs and preparations containing manufactured drug.

Clause 12.—This clause seeks to rationalise the sentence prescribed in respect of offences relating to psychotropic substances.

Clause 13.—This clause seeks to rationalise the sentence prescribed in respect of offences relating to illegal import or export of narcotic drugs and psychotropic substances.

Clause 14.—This clause seeks to remove the existing anomaly in respect of the offence of allowing premises, etc., to be used for commission of an offence. The proposed amendment would ensure that the person who allows the premises, etc., for commission of offences is not given the punishment higher than the one prescribed for the person who uses the premises, etc., for commission of offence.

Clause 15.—This clause enables that offences relating to small quantities, as part of rationalisation of sentence structure would now find a place in the respective sections.

Clause 16.—This clause seeks to restrict preparation as an offence only in respect of the offences under sections 19 (embezzlement of opium by licensed cultivators), 24 (external dealings), 27A (financing illicit trafficking) and offences relating to commercial quantities of drugs.

Clause 17.—This clause seeks to provide for higher punishment on all the offenders who has been previously convicted of the offence punishable under this Act.

Clause 18.—This clause seeks to abolish mandatory death sentence in respect of certain offences.

Clause 19.—The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, requires that certain factors are to be considered for imposing higher punishment to drug offenders. This clause seeks to provide for the same.

Clause 20.—This clause provides for trial of offenders who are charged with offences punishable with sentence up to three years by the Court of Magistrate and for summary trial of such offenders. This clause also provides for remand of accused charged with serious offences up to one year without filing challan/complaint.

Clause 21.—This clause provides for transfer of cases taken cognizance by the Sessions Court to Special Court by the respective High Courts.

Clause 22.—This clause seeks to liberalise bail provisions in respect of certain offenders.

Clause 23.—This clause is proposed to ensure that addicts who are charged with lesser offences get the benefit of release on probation.

Clause 24.—This clause enables the Central and State Governments to empower officers of various other Departments to exercise the power of authorising subordinate officers to arrest, search buildings, etc., or themselves exercise such power. This clause also extends such power and powers of Magistrates to matters pertaining to controlled substances and holding illegally acquired property.

Clause 25.—This clause enables the Central and State Governments to empower the officers of various other Departments to arrest and search building, etc. This clause also extends such powers to the matters relating to controlled substances and holding illegally acquired property. This clause further envisages that an officer who takes down any information in writing under sub-section (1) or records the grounds for his belief under the proviso to that Schedule shall send a copy thereof to his immediate official superior within a reasonable time.

Clause 26.—This clause extends the power of seizure, detention and search of persons in public places to matters pertaining to all offences including offences relating to controlled substances and to holding of illegally acquired property.

Clause 27.—This clause seeks to widen the scope of the Act as to include controlled substances.

Clause 28.—This clause provides for the power to stop and search conveyance in respect of controlled substances.

Clause 29.—This clause provides for search of a person by the empowered officers without taking him to the nearest Gazetted Officer or Magistrate if there is reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of contraband. The officer shall record such reasons after the search is over and send a copy of it within a reasonable time to his immediate official superior.

Clause 30.—This clause empowers the Director General, Narcotics Control Bureau to authorise the undertaking of 'controlled delivery'.

Clause 31.—This clause provides for empowering officers of other Departments the powers of an officer incharge of a police station by the Central and State Governments.

Clause 32.—This clause extends the presumption of guilt in certain circumstances in respect of controlled substances also.

Clause 33.—This clause extends the liability of illicit articles and conveyance to confiscation in respect of controlled substances also.

Clause 34.—This clause extends the liability of confiscation of goods used for concealing illicit articles in respect of controlled substances also.

Clause 35.—This clause extends the liability of confiscation in respect of sale proceeds of controlled substances also.

Clause 36.—This clause seeks to remove the anomaly of appeal lying to the same court.

Clause 37.—This clause seeks to ensure that the addicts who are charged with small quantity offences involving small quantity and volunteer for treatment get the benefit of immunity from prosecution.

Clause 38.—This clause seeks to apply the provisions of Chapter VA of the Act relating to tracing, freezing and seizure of illegally acquired property to a person who has been arrested or against whom warrant or authorisation of arrest has been issued for commission of offence punishable under the Act with imprisonment of ten years or more.

Clause 39.—This clause seeks to enlarge the scope of the term 'illegally acquired property'.

Clause 40.—This clause provides that the embargo of prohibition of forfeiture of the illegally acquired property of an offender is reckoned as six years before the date he was arrested or authorisation of arrest was issued against him. This clause also extends such embargo of prohibition to the property acquired by a person before six years from the date of order of detention was issued.

Clause 41.—This clause enables tracing and identifying illegally acquired property of a person as soon as he has been arrested or warrant or authorisation of arrest has been issued against him.

Clause 42 and 43.—These clauses are intended to ensure that the illegally acquired property seized or frozen is forfeited only after a person has been convicted.

Clause 44.—This clause provides for appeal by departmental officers against the order of the Competent Authority.

Clause 45.—This clause provides for automatic release of the property frozen or seized when the person is acquitted of the charges against him or when a detention order is set aside or withdrawn.

Clause 46.—This clause provides for the Central Government's power to make rules in respect of controlled delivery.

Clause 47.—This clause provides for laying before the Parliament notifications or orders made in respect of controlled substances.

Clause 48.—This clause provides for extending the benefit of liberal provisions of this Bill to those offenders who have committed the offences before the date the provisions of this Bill comes into force and the trial has not yet concluded.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 47 of the Bill enlarges the list of subjects in sub-section (2) of section 76 of the Act with respect to which rules can be made by the Central Government under sub-section (1) providing for 'the manner in which "controlled delivery" is to be undertaken'.

2. Clause (viii) and (xiii) of section 2 empowers the Central Government, by notification in the Official Gazette, to specify the commercial quantity and small quantity of narcotic drugs and psychotropic substances respectively. Clause (xi) of that section empowers the Central Government, by notification in the Official Gazette, to declare any other narcotic substance or preparation as a manufactured drug. Sub-section (3) of section 7A empowers the Central Government to specify by notified order the limit within which the Governing Body can sanction money out of the National Fund for Control of Drug Abuse and section 9A empowers the Central Government to control and regulate, by order, the controlled substances.

3. Clause 47 seeks to amend section 77 by providing therein the provision for laying of all such notifications and order before each House of Parliament.

4. The matters with respect to which the rules may be made are matters of procedure and administrative details. The delegation of legislative power is, therefore, of a normal character.

CHAPTER V

Procedure

Power to issue
warrant and
authorisation.

41. (1) A Metropolitan Magistrate or a Magistrate of the 1st class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under Chapter IV, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed.

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government or of the Border Security Force as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under Chapter IV or that any narcotic drug, or psychotropic substance in respect of which any offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence has been kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy, or a constable, to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest a person or search a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search or the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under section 42.

Power of entry,
search, seizure
and arrest with-
out warrant or
authorisation.

42. (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government or of the Border Security Force as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing, that any narcotic drug, or psychotropic substance, in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed in any building, conveyance or enclosed place, may, between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under Chapter IV relating to such drug or substance; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under Chapter IV relating to such drug or substance:

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior.

43. Any officer of any of the departments mentioned in section 42 may—

(a) seize, in any public place or in transit, any narcotic drug or psychotropic substance in respect of which he has reason to believe an offence punishable under Chapter IV has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of commission of an offence punishable under Chapter IV relating to such drug or substance;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under Chapter IV and, if such person has any narcotic drug or psychotropic substance in his possession and such possession appear to him to be unlawful, arrest him and any other person in his company.

Explanation.—For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to the public.

44. The provisions of sections 41, 42 and 43, shall so far as may be, apply in relation to the offences punishable under Chapter IV and relating to coca plant, the opium poppy or cannabis plant and for this purpose references in those sections to narcotic drugs, or psychotropic substance, shall be construed as including references to coca plant, the opium poppy and cannabis plant.

* * * * *

49. Any officer authorised under section 42, may, if he has reason to suspect that any animal or conveyance is, or is about to be, used for the transport of any narcotic drug or psychotropic substance, in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened at any time, stop such animal or conveyance, or, in the case of an aircraft, compel it to land and—

(a) rummage and search the conveyance or part thereof;

(b) examine and search any goods on the animal or in the conveyance;

(c) if it becomes necessary to stop the animal or the conveyance, he may use all lawful means for stopping it, and where such means fail, the animal or the conveyance may be fired upon.

* * * * *

53. (1) The Central Government, after consultation with the State Government, may, by notification published in the Official Gazette, invest any officer of the department of central excise, narcotics, customs, revenue intelligence or Border Security Force or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offences under this Act.

Power of seizure and arrest in public places.

Power of entry, search, seizure and arrest in offences relating to coca plant, opium poppy and cannabis plant.

Power to stop and search conveyance.

Power to invest officers of certain department with powers of an officer-in-charge of a police station.

(2) The State Government may, by notification published in the Official Gazette, invest any officer of the department of drugs control, revenue or excise or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of offences under this Act.

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Presumption
from possession
of illicit
articles.

54. In trials under this Act, it may be presumed, unless and until the contrary is provided, that the accused has committed an offence under Chapter IV in respect of—

(a) any narcotic drug or psychotropic substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance, or any residue left of the materials from which any narcotic drug or psychotropic substance has been manufactured,

for the possession of which he fails to account satisfactorily.

* * * * *

Liability of illicit
drugs, substances,
plants, articles and
conveyances to
confiscation.

60. (1) Whenever any offence punishable under Chapter IV has been committed, the narcotic drug, psychotropic substance, the opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to any narcotic drug or psychotropic substance which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

Confiscation of
goods used for
concealing illicit
drugs or
substances.

61. Any goods used for concealing any narcotic drug or psychotropic substance which is liable to confiscation under this Act shall also be liable to confiscation.

Explanation.— In this section "goods" does not include conveyance as a means of transport.

Confiscation of
sale proceeds
of illicit drugs
or substances.

62. Where any narcotic drug or psychotropic substance is sold by a person having knowledge or reason to believe that the drug or substance is liable to confiscation under this Act, the sale proceeds thereof shall also be liable to confiscation.

63. (1)

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Procedure in
making confis-
cations.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance, the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.

(3) Any person not convicted who claims any right to property which has been confiscated under this section may appeal to the Court of Session against the order of confiscation.

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64A. Any addict, who is not charged with any offence punishable under sections 15 to 25 (both inclusive) or section 27A, who voluntarily seeks to undergo medical treatment for de-toxification or de-addiction from a hospital or an institution maintained or recognised by the Government or a local authority and undergoes such treatment shall not be liable to prosecution under section 27 once in his lifetime:

Immunity from
prosecution to
addicts vol-
unteering for
treatment.

Provided that the said immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-toxification or de-addiction.

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CHAPTER VA

FORFEITURE OF PROPERTY DERIVED FROM OR USED IN ILLICIT TRAFFIC

68A.

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Application.

(2) The persons referred to in sub-section (1) are the following, namely:—

(a) every person who has been convicted of an offence punishable under this Act with imprisonment for a term of five years or more;

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(d) every person who is a relative of person referred to in clause (a) or clause (b) or clause (c);

(e) every associate of a person referred to in clause (a) or clause (b) or clause (c);

(f) any holder (hereafter in this clause referred to as the "present holder") of any property which was at any time previously held by a person referred to in clause (a) or clause (b) or clause (c) unless the present holder or, as the case may be, any one who held such property after such person and before the present holder, is or was a transferee in good faith for adequate consideration.

68B. In this Chapter, unless the context otherwise requires,—

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Definitions.

(g) “illegally acquired property”, in relation to any person to whom this Chapter applies, means,—

(i) any property acquired by such person, whether before or after the commencement of this Chapter, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to illicit traffic; or

(ii) any property acquired by such person, whether before or after the commencement of this Chapter, for a consideration, or by any means wholly or partly traceable to any property referred to in sub-clause (i) or the income or earning from such property,

and includes—

(A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause of such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before or after the commencement of this Chapter, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings therefrom;

* * * *

Prohibition of holding illegally acquired property.

68C. (1)

* * *

(2) Where any person holds any illegally acquired property in contravention of the provisions of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Chapter:

Provided that no property shall be forfeited under this Chapter if such property was acquired by a person to whom this Act applies before a period of six years from the date on which he was charged for an offence relating to illicit traffic.

* * * *

Identifying illegally acquired property.

68E. (1) Every officer empowered under section 53 and every officer-in-charge of a police station, shall, on receipt of information that any person to whom this Chapter applies has been charged with any offence punishable under this Act, whether committed in India or outside, proceed to take all steps necessary for tracing and identifying any property illegally acquired by such person.

* * * *

Notice of forfeiture of property.

68H. (1)

* * *

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

Forfeiture of property in certain cases.

68-I. (1)

* * *

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall,

subject to the provisions of this Chapter, stand forfeited to the Central Government free from all encumbrances.

* * * * *

68O. (1) Any person aggrieved by an order of the competent authority made under section 68F, section 68-I, sub-section (1) of section 68K or section 68L, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:

Appeals.

Provided that the Appellate Tribunal may entertain an appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

* * * * *

77. Every rule made under this Act by the Central Government and every notification issued under clause (xi) of section 2, section 3 and clause (a) of, and *Explanation (1)* to, section 27 shall be laid, as soon as may be, after it is made or issued, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, the rule or the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

Rules and notifications to be laid before Parliament.

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S. GOPALAN,
Secretary-General.

